SUPREME COURT, U. S.

FILED

IN THE

SUPREME COURT OF THE UNITED STATES

No. 991

OCTOBER TERM, 1970

STAPHAN L. KOSHKOFF,
Petitioner,

vs.

CHESAPEAKE & OHIO RAILWAY CO.,
Respondent.

SEAMAN'S APPEAL, RULE 54, 28 U.S.C. 1916

PETITIONER'S REPLY BRIEF

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TABLE OF AUTHORITIES

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We do not understand Respondent's argument that Petitioner (Plaintiff below) withdrew his claim under

the maritime law in the face of the indications of the Trial Judge at all phases of the proceedings that he did not agree with the Plaintiff's position, faced as he was with his own Circuit's ruling in *McKnight* v. *N. M. Paterson & Sons, Ltd.*, 286 F.2d 250 (6th Cir. 1960). Just as consistently as the Plaintiff raised the issue of maritime law, the railroad and the Trial Judge just as persistently refused to accept the premise. Respondent's recitations from the record make this just as clear as it was to the apprehensive attorney representing the Plaintiff in the District Court.

In this context, the Respondent's argument that Petitioner did not later object to the jury charges based on common law negligence is specious at best. The Trial Judge had already ruled that he was applying the common law, and was rejecting maritime law. On this status of the record, Plaintiff was not required to comply with Rule 51, Fed. R. Civ. Proc., requiring objections to charges as a predicate to appeal since he actually found no error with the charges as given, considering the previous rulings of the Trial Judge.

However, be that as it may, we do not understand the Trial Judge's refusal to apply maritime law, or even withdrawal of a claim under the maritime law by Plaintiff as a proper basis for changing the law. Either the Judge was correct in his comments that he did not agree with Plaintiff's position, or he wasn't, and this Court is the only court which can now resolve that conflict.

Nor do we understand, and fail to grasp the significance of the Respondent's devotion of the major portion of its brief to the Plaintiff's release of the shipowner-employer under the Jones Act, 46 U.S.C.A. 688, and the

claim for maintenance and cure. In coping with long delays in trial calendars, trial counsel representing injured plaintiffs must make hard decisions for their clients' welfare. In this case, a partial settlement several years before trial, on behalf of an elderly, now idle client seemed to be in his best interests.

It is respectfully submitted that either Staphan L. Koserkoff had a cause of action against the railroad under the maritime law, or even the common law, or he didn't, and the jury thought he did. The partial release should not determine the law. Either the jury was correct, or it wasn't. The release has nothing to do with it.

Supplementing the Petition, we note to the Court that several of the cases cited therein were then unreported, and are now reported:

Burrage v. *Flota Mercante Grancolombiana*, cited in the Petition at Page 15, is now reported at 431 F.2d 1229 (5th Cir. 1970).

Law v. *Victory Carriers, Inc.*, cited in the Petition at Pages 8, 10, 11, 12, is now reported at 432 F.2d 376 (5th Cir. 1970).

Chagois v. *Lykes Bros. S. S. Co.*, 432 F.2d 388 (5th Cir. 1970), supports the arguments in *Law* v. *Victory Carriers*. Also supporting these arguments is *Hagans* v. *Ellerman & Bucknal S. S. Co.*, 318 F.2d 563 (3rd Cir. 1963).

In the *Chagois* case, 432 F.2d, at 394, in footnote #3, the Fifth Circuit specifically notes its conflict with the Second and Sixth Circuits on the issue of whether or not a shoreside crane, discharging cargo from a vessel, is maritime equipment.

For the reasons given, it is respectfully submitted that this Court review the conflicts between circuits and grant the writ of certiorari to the Sixth Circuit.

Respectfully submitted,

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I hereby certify that copies hereof were mailed to Walter A. Kleinert, 2964 Penobscot Building, Detroit, Michigan, and Robert A. Straub, Room 407, No. 1 Northland Plaza, 20755 Greenfield Road, Southfield, Michigan, this 26th day of January, 1971.

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